

CARL GERARD

IBLA 79-119

Decided February 2, 1983

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting appellant's simultaneous oil and gas lease offer M 41981.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Rules of Practice: Generally

Where BLM rejects an oil and gas lease offer subject to compliance within 30 days, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

2. Rules of Practice: Generally

BLM properly rejects a request for a time extension filed after termination of the 30-day compliance period where the rights of third parties are affected.

3. Oil and Gas Leases: Applications: Generally -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Notice of Appeal

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978), prospectively limited in effect.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

Carl Gerard has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease offer M 41981.

On October 25, 1978, BLM notified appellant that his offer had received first priority in the September 1978 simultaneous drawing for parcel MT 1299. In this decision, however, BLM informed appellant that his offer was rejected "subject to your right to furnish one of the following affidavits" attesting to certain matters which would bring appellant into compliance with BLM requirements. Specifically, BLM noted that both the drawing entry card and the required statements of appellant and his leasing service, Stewart Capital Corporation (Stewart), appeared to have facsimile or machine reproduced signatures. BLM further stated:

It is impossible to determine if the signature on the reverse of the drawing entry card and accompanying statement are in fact your true signatures because no where does your original signature appear.

Since the statements accompanying your offer were not originally executed, they have no legal force of effect; and, therefore, you did not file appropriate evidence as to who affixed your signature to the card and how your offer was formulated.

This notice was received by Stewart on October 27, 1978.

On November 28, 1978, 32 days after Stewart had received the BLM decision, counsel for appellant telephoned BLM requesting an extension of time for submitting the affidavit. BLM informed him that since BLM had received neither the affidavit nor a request for an extension within 30 days, the decision had become final. In a letter dated November 29, 1978, counsel argued that the 30-day period should run from the day that appellant personally received the decision rather than the day that Stewart received it. If so, appellant's request for an extension would have been timely. In the alternative, counsel argued that the 30-day deadline should not be strictly applied because it was not set forth by regulation. On the basis of these arguments, appellant requested that a determination be made that he had complied by submitting an affidavit prior to December 4, 1978, 30 days after his personal receipt of the decision or that a time extension be granted. Appellant also indicated his intention to appeal a denial of this request challenging the implication in the original decision that it was final and that the time for appealing was the same 30 days as the period for compliance.

By letter dated December 4, 1978, BLM reaffirmed its position by indicating that the rejection was final because neither an affidavit, a request for extension, nor a notice of appeal was received by November 27, 1978. Appellant appeals this decision asserting initially that he has the right to appeal and also that BLM made substantive errors in its decisions with respect to his offer.

[1] Appellant argues that the 30 days for compliance should have run from appellant's personal receipt of the BLM decision on November 3, 1978, rather than his leasing service's receipt of it on October 27, 1978. This is incorrect. The appropriate regulation, 43 CFR 1810.2(b), states:

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. [Emphasis added.]

With respect to this regulation, the Board has noted that

[t]he regulation is reasonable and necessary to expeditious administration. The conduct of Government business cannot be made to await the pleasure or convenience of those individuals who seek to treat with it, nor should federal employees have to search out those individuals who have neglected to arrange their own affairs so that they might receive official communication promptly.

Robert D. Nininger, 16 IBLA 200, 202 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975); accord, Dawson v. Andrus, 612 F.2d 1280, 1283 (10th Cir. 1979).

Appellant voluntarily elected to use a leasing service and in so doing must bear the consequences. Since the leasing service address was placed on appellant's drawing entry card as his address of record, BLM was only obligated to send notice of its decision to that address. <sup>1/</sup> The 30-day period runs from the date of receipt of the communication at the record address, October 27, 1978.

[2] Appellant also asserts that, if the 30 days did begin to run on October 27, 1978, a strict 30-day limitation should not be enforced because such limitation is not required by statute or regulation and there is no overriding administrative need to do so in this case. Appellant, however, fails to consider the rights of the other parties interested in this oil and gas lease, the holders of the second and third priorities. Until a lease is granted, their offers are outstanding and the interests of these parties are affected by the actions of BLM and appellant. Further, extensive delays in the issuance of leases result in the loss of revenues to the Government.

Moreover, we note that while it is true that no regulation requires the filing of the requested information within 30 days, the regulations do require

---

<sup>1/</sup> Subsequent to this case, and, in part, to avoid precisely the types of problems manifested herein, the Departmental regulations were changed to require that the address placed on the application be "the applicant's personal or business address" and to expressly prohibit use of the address of a filing service. See 43 CFR 3112.2-1(d).

that any applicant follow reasonable time limits contained in BLM decisions. The applicable regulation, 43 CFR 1821.2-2(e), provides:

Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public. [Emphasis supplied.]

The decision herein clearly notified appellant that he had 30 days to file the requested information. Appellant did not file the information timely, nor did he request an extension of time in which to comply until after the running of the 30-day period. The 30-day period expired on November 26, 1978, which was a Sunday. Thus, under the terms of the regulation, the information or a request for additional time could have been received on Monday, November 27. The request for an extension was orally communicated, via telephone, on Tuesday, November 28. It was thus clearly untimely.

In its determinations, BLM must consider the rights of all affected parties. We hold that 30 days was a reasonable period for submission of the appropriate affidavit and BLM's denial of the request for a time extension as untimely was proper. See F. Peter Zoch, 60 IBLA 150 (1981).

[3] Inasmuch as we have concluded that the 30 days provided by the decision commenced on October 27, 1980, and that any extension of time request was untimely, we must examine the question whether the appeal, itself, was timely brought. Departmental regulations provide that "any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management \* \* \* shall have a right to appeal to the Board," 43 CFR 4.410, and that "[t]he notice of appeal \* \* \* must be transmitted in time to be filed \* \* \* within 30 days after the person taking the appeal is served with the decision from which he is appealing." 43 CFR 4.411.

We note that BLM has long followed the practice of issuing decisions "holding for rejection" an offer or application for some identified deficiency, but allowing a stated period of time within which such deficiency might be corrected, failing in which the offer or application will be rejected without further notice. It is our view that, where such a decision clearly contemplates that rejection will occur upon the running of the prescribed period, such a decision is interlocutory. It is, in effect, an interim determination affording an applicant an opportunity to correct a perceived deficiency prior to rejection of the application. On receipt of such a decision, a party may elect to comply in the manner prescribed, comply under protest, or await the running of the identified period and appeal the final rejection. In such a case, the 30-day appeal period commences upon the expiration of the 30-day compliance period. See State of Alaska, 42 IBLA 94 (1979); State of Alaska, 41 IBLA 309 (1979). 2/

---

2/ We would note that under such an analysis, by failing either to comply or to comply under protest, an applicant waives his right to comply should a subsequent appeal be determined adverse to his interests and thus his offer or application is properly rejected with finality. To the extent that Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978), implies an opposite conclusion, it is hereby prospectively overruled to the extent it is inconsistent.

The instant case, however, is not a decision "holding for rejection" but one which actually "rejected" the application subject to compliance. The rejection occurred upon issuance of the decision, and the action taken at that time was both adverse to the appellant and ripe for appeal. Had an appeal been timely filed, the effect of the appeal consistent with Mobil Oil Corp., *supra* (see note 2), would have been to toll the running of the time provided for compliance and had the appeal proved unsuccessful, appellant would have been afforded the full 30 days in which to submit the necessary information. Appellant, however, failed to timely appeal this adverse decision and, in so acting, is precluded from obtaining review of the decision before this Board. As the time for compliance had likewise expired, his offer must be considered finally rejected for the Department.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

James L. Burski  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Edward W. Stuebing  
Administrative Judge

